process by which this result has been reached is only one out of many instances in which that instrument has been made to furnish all the authority necessary for the exigencies of the national government. Under the clause declaring that the judicial power of the United States extends "to all cases arising under the Constitution, the laws of the United States," etc., the Supreme Court has asserted in several decisions the jurisdiction of the Federal courts in all cases where the acts in question were done by an officer in the course of the performance of his duties under the laws of the United States. In *Tennessee* v. *Davis*, 100 U. S. 257, for instance, a prosecution of a revenue officer for a homicide done in the course of the performance of his duty was removed from the State to the Federal courts. The celebrated case *In Re Neagle*, 135 U. S. 1, which was a *habeas corpus* case, went further than this, or than the decision of *In Re Waite*, *supra*, inasmuch as the provision of the statute allowing the use of the writ in cases where "the party is in custody for an act done in pursuance of the Constitution and laws of the United States," etc., was extended to a case where the act was not done in pursuance of an express provision of the Constitution or a statute, but only under authority implied from the general powers conferred on the branches of the government.

It might seem that in all these cases a writ of error to the Supreme Court of the United States, after trial by the State courts, would have secured to the defendant the proper adjudication of his justification under the laws of the United States, and avoided conflict with the State courts; yet in actual experience it has proved necessary, in order to prevent the national government from being seriously hampered, even to temporary extinction, by possibly hostile State authorities imprisoning its officials, to remove such cases immediately and entirely from the control of the State courts. Whether this is done on the ground that the State courts can have originally no jurisdiction over such cases, as is declared in *Re Waite*, or on the ground that the United States courts have a paramount jurisdiction by which they can at any time displace the jurisdiction of the State courts, is perhaps hardly material, from a practical point of view. Such a proceeding must always look like a strong measure, yet will always be admitted to justify itself when perceived to be necessary for the existence of the national government.

TAXATION OF WATER POWER. — In the case of *Union Water Power Co.* v. *City of Auburn*, 37 Atl. Rep. 331 (Maine), the Supreme Court of Maine has recently decided that water power, as such, is not appurtenant to the land on which it is created, and hence cannot be taxed there. The court holds that, as the water is not property, and hence not taxable in itself, the power created by damming it is a mere "potentiality," and is to be taxed only "indirectly, in the valuation of the mill with which it is used." This case seems to be supported by the early Massachusetts case of *Boston Mfg. Co.* v. *Newton*, 22 Pick. 22, to which the court refers, and is in accord with what seems to be the trend of Massachusetts opinions upon this point. In spite of this authority, however, and of the reasoning of the court, the dissenting opinion of Emery, J. seems to be better law.

The first argument of the court is that it is impossible to tax the water power where created, because there is nothing there to tax; it can be

got at only when it manifests itself, so to speak, by turning machinery, and thereby becoming the main element in determining the value of a mill. The second argument is one of expediency; that to hold otherwise would throw into confusion the whole system of taxation. The simple answer to both these arguments is that they may be shown by a common sense view of the facts to rest on no sound basis. If the owner of a piece of rocky land beside a stream erects a dam whereby he creates a head of water, it seems plain that the value of his land is enhanced by it. He could sell it for more in the market; it is worth more to him if he wishes to use it for himself. Whether this be called the creation of a potentiality or not, the simple fact is that his land is worth more because it has a good water power. This being so, there is no reason why the land thus increased in value should not be taxed correspondingly. If a lot were increased in value by the discovery of petroleum wells, it would surely be no objection to the imposition of an increased tax to say that the petroleum was carried fifty miles away in pipes before being consumed. Nor would it be any more conclusive to argue that because the value of the plant using this cheaper fuel was thereby increased, that of the land whence the fuel came could not also be increased. It is just here that we find an answer to the second argument also. There is no reason why the building of the dam, at the same time that it increases the value of the land on which it is situated, should not likewise, by furnishing cheaper or more abundant motive power to a down-stream factory, raise the taxable value of the latter. This point seems to have escaped the attention of the court. It seems, however, to offer a satisfactory solution of the difficulty, and is one of the grounds on which a decision opposed to that of the Maine court was reached by the New Hampshire court in *Mfg. Co.* v. *Gifford*, 64 N. H. 337.

What constitutes Champerty. — The Supreme Court of the United States has recently given a decision in *Peck* v. *Henrich*, 173 Sup. Ct. Rep. 927, upon the interesting point, not often raised, as to what constitutes champerty. In this case, the title to a piece of land was conveyed to the plaintiff as trustee; all costs of obtaining possession of it were to be borne by him; and in the event of its being obtained the trustee was to receive 33⅓ per cent of the proceeds "after paying all expenses, costs, and expenditures" out of his share. The decision of the court that this agreement is champertous seems plainly right. According to Blackstone, 4 Commentaries, 124, and also the later cases, such as *Ry. Co.* v. *Brady*, 57 N. W. Rep. 767 (Neb.); *Land Co.* v. *City of Superior*, 67 N. W. Rep. 38 (Wis.), there are three elements necessary to constitute the offence. First, and this is common to all forms of maintenance, the absence of any other interest in the case on the part of the champertor than that arising from his champertous contract; second, the assumption by the champertor of all expenses in conducting the case; third, a previous agreement for his remuneration from the proceeds of the suit. The present case combines these three elements.

The general ground upon which the legal condemnation of champerty rested, and still rests, is that of public policy. It may be questioned, however, if the common law offence of champerty, as we know it to-day, whether regarded from an historical or from a practical point of view, deserves to be considered as a living part of the law. Historically, the